IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Kana Ram & Ors. The State of Rajasthan.

D.B.Cri. Appeal No.284/1982

Under Section 374 Cr.P.C. against the judgment dated 31.07.82 passed by the Sessions Judge, Jodhpur, in Sessions Case No.09/1981.

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Date of Judgment: 24th September, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.J.S.Choudhary for the appellants.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

This appeal has been filed by the present appellants, being aggrieved by the decision of the court of Sessions Judge, Jodhpur, in Sessions Case No.09/1981 dated 31.07.82.

Out of the 5 accused tried by the trial court, one of the

accused Gheesa Ram died, during the pendency of the trial. Therefore, the trial proceeded only against the four accused persons, who are the appellants before us. The four accused appellants were convicted and sentenced by the trial court as under :-

> "अत: प्रत्येक अभियुक्तगण को निम्न प्रकार से दण्डित किया जाता है:-
>
> 1- अभियुक्त कानाराम पुत्र किस्तुराराम जाति माली निवासी भोपालगढ़ एवं
> 2- अभियुक्त पांचाराम पुत्र गंगाराम जाति माली निवासी भोपालगढ़ को :-
>
> अ) धारा 302/149 के अपराध में आजीवन कारावास एवं 1000 रूपये के अर्थदण्ड अन्यथा एक वर्ष का कठोर कारावास,
>
> ब) धारा 326, भा0 द 0 सं0 के अपराध के लिए तीन वर्ष का कठोर कारावास एवं रूपये 500/- का अर्थदण्ड, अन्यथा छ: माह का कठोर कारावास,
>
> स) धारा 324 के अपराध के लिये एक वर्ष का कठोर कारावास एवं 400 रूपये का अर्थदण्ड, अन्यथा तीन माह का कठोर कारावास,
>
> द) धारा 460, भा0 द 0 सं0 के अपराध के लिए चार साल का कठोर कारावास, 1000 रूपये का अर्थदण्ड, अन्यथा एक वर्ष का कठोर कारावास
>
> च) धारा 148, भा0 द 0 सं0 के अपराध के

लिए छः माह का कठोर कारावास एवं 100 रूपये का अर्थदण्ड,

छ) धारा 323, भा0 द 0 सं0 के अपराध के लिए दो माह का कठोर कारावास।

एवं प्रत्येक अभियुक्तगण:-

3- प्रेमाराम पुत्र नाथाराम जाति माली निवासी बुचलका एवं
4- रामपाल पुत्र भींवजी जाति माली निवासी भोपालगढ़, को

अ) धारा 302/149, भा0 द 0 सं0 के अपराध में आजीवन कारावास
एवं 1000 रूपये का अर्थदण्ड, अन्यथा एक वर्ष का कठोर कारावास,

ब) धारा 325, भा0 द 0 सं0 के अपराध के लिए दो वर्ष का कठोर कारावास एवं 600 रूपये का अर्थदण्ड, अन्यथा दो माह का कठोर कारावास:

स) धारा 323, भा0 द 0 सं0 के अपराध के लिए दो माह का कठोर कारावास,

द) धारा 460, भा0 द 0 सं0 के अपराध के लिए चार साल का कठोर कारावास,1000 रूपये का अर्थदण्ड का अर्थदण्ड एवं अन्यथा एक वर्ष का कठोर कारावास

च) धारा 147, भा0 द 0 सं0 के अपराध के लिए

दो माह का कठोर कारावास

ये सभी मूल कारावास के दण्ड एक साथ भुगताये जावेगें।

अपराध से सम्बन्धित जो भी सामग्री इस न्यायालय में प्रस्तुत हुई है वह इस निर्णय एवं दण्डादेश के विरूद्ध माननीय उच्च न्यायालय में होने वाली संभावित कार्रवाई की अवधि समाप्त होने पर नष्टभ्रष्ट की जावे।"

The basic prosecution story was that a group of 20 persons, entered into the house of the complainant, to rescue Sundari, a lady who had contacted Nata with Mangla Ram, brother of PW/1 Dhanna Ram. It was not palatable to the part of the community and, therefore, on the fateful night, some 20 persons entered into the house and it is alleged that accused Pancha Ram , Kana Ram and Gheesa Ram had 'pharsi' with them and the other accused persons had lathis. According to the narration of the witnesses in the prosecution story, Gokal is the deceased and he was inflicted 'dharia' blow by Gheesaram , on his head. Gheesa Ram died during trial. Gokal, deceased , is alleged to have sustained following injuries according to the post mortem report:

1	Bluish Bruise 7 cm x 4 cm with swelling on the posterior side of Rt. hand extending to 12 cm above the Rt. wrist joint on the right forearm of posterior side and inner side.	*?*	*Blunt*	*(1) scar 5 cm x 1.5 cm on the front side .*	*Advised X-ray for injury No.1 for evidence of fracture Rt. Fore-arm (Ulna)*
2	Abrasion- on the front side of left leg 9 cm above the left ankle joints of size 1cm x 0.5 cm.	*Simple*	*Blunt*	*(2) Black mole on the Rt. Side of face*	*Injury No.2 having crush function.*

The medical opinion and the post mortem report was - " In my opinion, the cause of death is head injury" . The injury is assigned to accused Gheesa Ram, now dead. All other injuries to the deceased were in the nature of bruises and abrasions.

The learned counsel for the appellants, without disputing the incident , argued on the nature of offence and it was alleged that accused Gheesa Ram who is since dead, was the person who is responsible for casing such injury to the deceased on head , which ultimately proved fatal to the deceased. All other accused persons have been held guilty with the aid of Section 149 IPC and not for their individual participation. The argument of the learned counsel for the appellants is that if section 149 IPC is removed, then it would be a legally sound proposition that the other accused persons can not be held guilty under section 302 IPC, for the death of deceased

Gokal. The nature of injuries to the deceased suggest that it was only the head injury which was capable of doing anything of the nature of murder, otherwise all other injuries were bruises and abrasions and, therefore, attributing common object to do away with the deceased is not a sound proposition.

If the other accused persons would have shared the common object of killing the deceased ,then they would have certainly caused such injuries to the deceased which would have been at least grievous in nature. The learned counsel further stressed that the common object of the unlawful assembly could only be termed as to be one ,where they wanted to rescue Sundari. No sooner Sundari was rescued, the purpose of the unlawful assembly came to an end, and in that light, the conviction of the accused appellants under Section 302/149 IPC is not sustainable.

If, according to the learned counsel, this is not accepted as a prosecution case that the common object of the unlawful assembly was to kill Gokal then for the offences for which the accused have been convicted, they have remained sufficiently behind the bars and their conviction under other sections may be maintained and they may be released on the period already

undergone.

A detailed chart of confinement of the accused is delineated herein below:-

(1)Kana Ram , s/o Kistura Ram-

During trial- 11.09.80 to 07.01.81 = 3 months and 27 days
During appeal -27.07.82 to 17.05.86 = 3 years , 9 months and 20 days.
Total = 4 years 1 month and 17 days.

(2) Pancha Ram s/o Ganga Ram-

During trial -11.09.80 to 07.01.81 = 3 months and 27 days
During appeal -27.07.82 to 22.05.86 =3 years, 9 months and 25 days.
Total = 4 years 1 month and 22 days.

(3) Prema Ram, s/o Natha Ram
During trial – 15.09.80 to 07.01.81= 3 months and 23 days.
During appeal – 27.07.82 to 22.09.82= 1 month and 25 days.
Total =5 months and 18 days.

(4) Rampal s/o Bhinvji – anticipatory bail 20.01.81
During trial -No.J/C P/C -Nil-
During appeal 27.07.82 to 22.09.82 =1 month and 25 days.
Total = 1 month and 25 days.

Thus, the learned counsel pressed that accused Kana Ram and Pancha Ram have already undergone more than what was

ordered to be served out by them as sentences for all other offences under section 302/149 IPC and accused Prema Ram and Ram Raj have remained behind the bars for some time, though not completely, but the offence having taken place in the year 1980, and after the period of 27 years sending them behind the bars, would not be in the interest of justice .

The learned Public Prosecutor , agreed on the proposition for Gheesa Ram, who was the principal offender, who was responsible for causing the death of Gokal and it was his injury which proved fatal, and the other persons did accompany him and, therefore, they shared common object of the unlawful assembly to some extent.

We have heard the learned counsel and have given our thoughtful consideration to the material available on record.

Looking to the facts and circumstances of the case, for the death of Gokal, it would not be safe to impute common object to all the persons. It was the injury inflicted by Gheesa Ram which was responsible for the death of Gokal and he having died, it is not considered safe to convict the rest of the accused with the aid of

Section 149 IPC. Rest of the accused persons cannot be said to have participated as a member of the unlawful assembly to do away with Gokal. Their conviction and sentence under section 302/ 149 IPC is set side. Consequently, the sentence under this section is also set aside.

The conviction of the other accused persons under other sections, having been not challenged, is not gone into. Their convictions are maintained. However, sentences of Prema Ram and Ram Raj are reduced to the period already undergone. Kana Ram and Pancha Ram have already served out more than what has been awarded to them. Thus, it is ordered that the sentence part be amended accordingly.

In the result, the appeal of the accused appellants is partly allowed. Their conviction and sentence passed under section 302/149 IPC is set aside. The conviction of the appellants under other sections is maintained. Their sentences are reduced to already undergone. They are on bail. Their bail bonds are cancelled. They need not surrender.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George